

-Appeal ref : APP/A2280/W/20/3262858

Medway Council ref : MC/20/0028

Site : Land South Of Multi Storey Car Park, Hempstead Valley Shopping Centre,
Hempstead Valley Drive, Hempstead, Gillingham, Medway

Proposal : Construction of a drive-thru restaurant, reconfiguration of car park
and closure of multi-storey car park exit ramp

Appeal Statement for the Council

Planning application MC/20/0228 was refused planning permission on 8th July 2020 for the following reasons:

- 1. The proposed development is simplistic and generic in architectural design and by the nature of the use is likely to be subject to an array of advertisements at a later date. The siting of the building would also be within close proximity to Hempstead Valley Drive at an access point into and out of Hempstead Valley Shopping Centre. As a result of this, the proposed development would be unacceptably prominent within the street scene where development associated with the shopping centre is generally set back from the road with a significant level of soft landscaping along the road which contributes to maintaining a feeling of openness and greenery whilst you travel along Hempstead Valley Drive. This helps keep a balance between the suburban residential character and ensure that the shopping centre and its associated buildings are not the dominant feature along this road frontage. In addition, at times queues of customers for the drive through will impact negatively on access to the centre's multi storey car park and indeed may result in queueing up to Hempstead valley drive and thereby impact on traffic congestion in the area to the detriment of the free flow of traffic and the amenities of the area. The proposal is contrary to Policies BNE1, BNE2 and T1 of the Medway Local Plan 2003 and paragraphs 124 and 127 of the NPPF 2019.*
- 2. Notwithstanding the litter picking strategy discussed with the applicant and generally in force within the confines of the centre itself, the LPA is concerned that a number of visitors to the drive through will take their purchases to nearby attractive areas and after eating will fly tip the resulting waste to the detriment of the amenities of the area, particularly if there are no litter bins at those particular places. The proposal is therefore contrary to general ambition of Policy BNE2 of the Local Plan to protect the amenities of an area.*

The Council's statement in relation to the above reasons for refusal are expanded below.

First Reason for Refusal:-

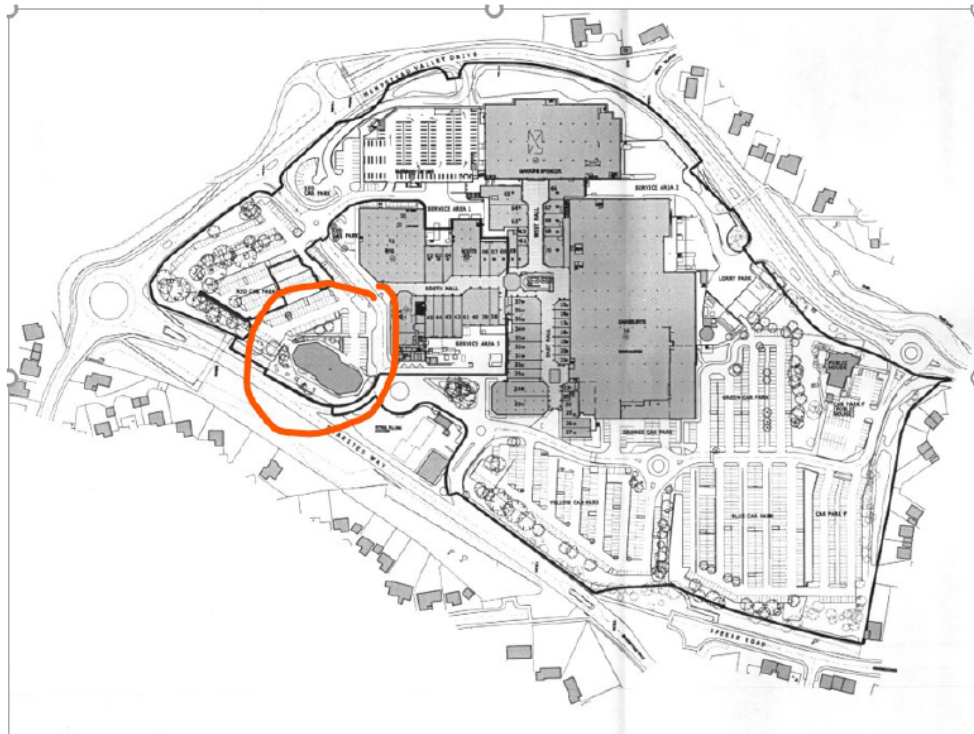
Within the Hempstead Valley Shopping centre (HVSC) site, on an existing parking area, there are two previous planning permissions granted for detached buildings which provide additional retail/services floorspace for the centre. The red hand drawn circle on the plan

MC/17/3484 (new retails units building – Extant and to be constructed)





MC/12/1873 (mixed use Class A1, A2 and A3, D1 and/or D2) – Constructed and complete on site:





Proposed Elevation 5 (West) view from red car park

In addition to these buildings (one built out and other one extant planning permission) there is a two storey car park permitted as part of the MC/17/3484 -planning permission to the east of the retail block. There is also a historic petrol filling station on the outskirts of the centre accessed off Sharsted Way. The two bespoke buildings, as part of the shopping centre floor space, are located close to the entrances to the main shopping centre building.

In contrast to these high quality, bespoke design buildings the proposed building for the drive-through is of a 'simple and generic design', as stated in the first reason for refusal. The location of the proposed drive-through building is a significant distance from the entrances to the main shopping centre, unlike the two bespoke buildings, and would not have the same direct connectivity for shoppers as those units for that reason. The design and location of the proposed drive through, within the shopping centre site, -is more akin to a retail park than this 'district' shopping centre. The design of the proposed drive-through, by both appearance and location within the shopping centre site, demonstrates that the proposal is not in keeping with the design principles of the original shopping centre where units are more 'contained' within the site, rather than to the edges.

By the nature of drive through restaurants there is often a proliferation of advertisements and structures in addition to the building itself which would add to the visual clutter of the site and such paraphernalia is not seen elsewhere within the shopping centre in relation to existing units.

What will be apparent at the Inspector's site visit, which is not necessarily readily apparent from the appellant's CGIs from Hempstead Valley Drive, is the depth of field and whilst the main shopping centre building in the CGIs are at a significant distance away from the road at the access to the shopping centre, the proposed drive-through building would be close to the Hempstead Valley Road.

Furthermore, due to the location of the appeal site at the bellmouth of the access road into the shopping centre from Hempstead Valley Drive, the drive-through development would appear as a 'gateway' development into the shopping centre. However, the shopping centre site characteristically does not have gateway structures but is very open and green to its Hempstead Valley Road edge.

As such the location of the proposed building would be out of character to the original design principles of the shopping centre and as a 'gateway' structure the 'simple and generic' design of the building is not of a high enough design quality or appearance to be a positive gateway building to the centre. Any additional paraphernalia and

advertisements would further detract from the character of the shopping centre and area and would make the site more prominent in a negative and cluttered way.

The proposed landscaping scheme involves the removal of some trees and shrubbery within the site and at its edges and a new scheme of trees and shrubbery in addition to the retained trees. Particularly in the earlier years of growth and in the winter, the proposed development will be particularly prominent in views from outside the site and along the access road, emphasising the visual harm and harm to the character of the area through the location and design of the proposed development.

The layout plan shows that there is only a single queuing line for vehicles using the drive through. As a result, there is less capacity for cars queuing to use the drive through than commonly seen at drive through sites which have more than one order lane that increases queuing capacity. The site arrangement within the wider shopping centre site is such that should cars for the drive through queue back off the site those stationary cars would interfere with flow of traffic trying to access the multistorey car park. The combined traffic of cars queuing to try and access the multistorey car park in addition to those queuing for the drive through may result in a queue back to the mini-roundabout to the south of the application site, and thereby affect much of the traffic routes and flow within the shopping centre site. There would also be the potential for traffic queues even back onto Hempstead Valley Drive at busy times for the shopping centre.

As such the proposal is contrary to Policies BNE1, BNE2 and T1 of the Medway Local Plan 2003 and paragraphs 124 and 127 of NPPF 2019.

Second Reason for Refusal:

Policy BNE2 of the Local Plan 2003 and paragraph 127 of the NPPF 2019 seeks to protect neighbours' amenities, which covers a diverse range of matters which have the potential to impact the quality of life for residents and users in the area and their environment.

In this case there are a number of attractive areas within a short drive of the site such as Public Rights of Way to the south that cross into Areas of Local Landscape Importance, Capstone Country Park or Luton Recreational Ground. Notwithstanding the litter picking in the local vicinity to the site there is considerable concern that this proposed regime is insufficient to mitigate the harm to the environment, and quality of life within the area more widely, from littering related to the proposed development.

The proposal is therefore contrary to general ambition of Policy BNE2 of the Local Plan to protect the amenities of an area.

Notwithstanding the above, should the inspector be minded to allow this appeal the Council would suggest it be subject to the following conditions:

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing numbers 19142 E 200 P1 and BMD.19.055.DR.P301 received 6 January 2020; 003 rev 01, 008 rev 02 and 009 rev 02 received 13 January 2020; BMD.19.055.DR.P201 rev C received 17 April 2020; and 004 rev 08, 006 rev 02, 007 rev 02 and 010 rev 03 received 7 May 2020 15

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 All materials used externally shall be as detailed on approved elevation drawing numbers 006 rev 02, 007 rev 02 and 008 rev 02.

Reason: To ensure that the appearance of the development is satisfactory and without prejudice to conditions of visual amenity in the locality, in accordance with Policy BNE1 of the Medway Local Plan 2003.

- 4 Prior to the first use of the unit herein approved, an acoustic assessment shall be undertaken to determine the impact of noise arising from mechanical plant. The cumulative noise rating level (L_{Ar},T_r) of mechanical plant shall be at least 10dB below the background noise level (L_{A90},T) at the nearest residential facade. All measurements shall be defined and derived in accordance with BS4142: 2014. The results of the assessment and details of any mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is brought into use and thereafter be maintained in accordance with the approved details.

Reason: To ensure the protection of residential amenity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 5 Prior to the first use of the unit herein approved, the area shown on the submitted layout as vehicle parking space shall be provided, surfaced and drained in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed prior to the first use of the development and be maintained as such thereafter. Thereafter the vehicle parking and manoeuvring area shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to these reserved parking spaces.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to hazardous on-street parking and in accordance with Policy T13 of the Medway Local Plan 2003

- 6 Deliveries and the servicing associated with the unit herein approved shall be carried out only in accordance with the Delivery Service Management Plan as set out in Appendix B of the Transport Statement (dated December 2019).

Reason: To ensure that the development does not prejudice conditions of amenity and highway safety in accordance with Policies BNE2 and T1 of the Medway Local Plan 2003.

- 7 Prior to the first use of the unit herein approved details of the location and appearance of litter bins have been submitted to and approved in writing with the Local Planning Authority. The litter bins shall be implemented in accordance with the approved details prior to the first use of the unit herein approved and the management of litter shall be implemented in accordance with the 'Litter Strategy' received on 1 April 2020.

Reason: To mitigate issues related to litter in connection with the development to accord with Policy BNE2 of the Medway Local Plan 2003.

- 8 Within six months of works commencing, details of how the development will enhance biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The biodiversity enhancement measures shall be implemented in accordance with the approved details prior to the first use of the unit herein approved and shall thereafter be retained.

Reason: To protect wildlife in accordance with Policy BNE39 of the Medway Local Plan 2003.

- 9 Prior to the first use of the unit herein approved, all hard landscaping detailed in the approved drawings shall be completed and all planting detailed in the approved scheme of landscaping, as detailed in drawing numbers BMD.19.055.DR.P201 rev C (Planting Plan) and BMD.19.055.DR.P301 (Tree Pit Details) shall be implemented by the latest of the first planting season following first use of the development hereby approved. The landscaping shall be managed and maintained in accordance with the document "Green Infrastructure : 5 year Landscape Management and Maintenance Plan (BMD.19.055.SPP002, dated 09.10.19)" and any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

Reason: Pursuant to section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality, in accordance with Policy BNE1 and BNE6 of the Medway Local Plan 2003.

- 10 The works shall be carried out in accordance with the tree protection measures detailed in the document Arboricultural Impact Assessment (Wharton, reference 191025 0944 AIA V2, dated 25 October 2019).

Reason: Pursuant to section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and

locality, in accordance with Policy BNE1 and BNE6 of the Medway Local Plan 2003.

- 11 No vegetation clearance or development shall take place during the bird nesting season (March to September inclusive) unless a suitably qualified ecologist has first confirmed that no nests or dependent young are present (nesting bird checks within 24 hours of work commencing).

Reason: Required before commencement to ensure satisfactory arrangements are made to safeguard the habitats in the interests of ecology in accordance with Policy BNE37 of the Medway Local Plan 2003.

- 12 No works shall take place including site clearance until all precautionary mitigation measures and/or works for hedgehogs has been carried out in accordance with the details contained in section 1.1.38 of the BMD Ecological Constraints Review reference BMD.19.055.RPE/TN.801.EcoConstraints (dated October 2019).

Reason: To protect wildlife in accordance with Policy BNE37 of the Medway Local Plan 2003.

- 13 If, during development, contamination not previously identified is found to be present at the site, no further development shall take place until a method statement has been submitted to and approved in writing by the Local Planning Authority. The Method Statement must detail how this unsuspected contamination shall be dealt with. The development shall thereafter be implemented in accordance with the approved Method Statement.

Reason: To ensure that the development is undertaken in a manner which acknowledges interests of amenity and safety in accordance with Policy BNE23 of the Medway Local Plan 2003.

- 14 The use hereby permitted shall only operate between the hours of 07:00 to 23:00 hours Mondays to Saturdays inclusive and between the hours of 09:00 and 22:00 hours on Sundays and Public Holidays.

Reason: To ensure that the development does not prejudice the amenities of neighbours in the vicinity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 15 No commercial goods shall be loaded, unloaded, stored or otherwise handled and no vehicles shall arrive or depart, within the application site outside the hours 07:00 to 19:00 Monday to Friday, 08:00 to 18:00 Saturday or at any time on Sunday or Public Holidays.

Reason: To protect residential amenity in the vicinity in accordance with Policy BNE2 of the Medway Local Plan 2003.

- 16 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-

enacting that Order with or without modification) no development shall be 18 carried out within Schedule 2, Part 3 of that Order unless planning permission has been granted on an application relating thereto.

Reason: To enable the Local Planning Authority to control such development in the interests of retail provisions in accordance with Policy R7 of the Medway Local Plan 2003.

- 17 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any order amending, revoking and re-enacting that Order with or without modification) no change of use shall occur outside of use classes A3/A5 as hereby permitted.

Reason: To enable the Local Planning Authority to control such development in the interests of retail provisions in accordance with Policy R7 of the Medway Local Plan 2003.